

THE RHODE ISLAND ETHICS COMMISSION

January 24, 2006

The Rhode Island Ethics Commission held its 2nd meeting of 2006 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, January 24, 2006, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

James Lynch, Sr., Chair Patricia M. Moran*

Barbara Binder, Vice Chair James C. Segovis

George E. Weavill, Jr., Secretary Frederick K. Butler*

Richard E. Kirby* Ross Cheit

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Jason Gramitt, Staff Attorney/Education Coordinator; Staff Attorneys Dianne L. Leyden and Macall S. Robertson; and, Commission Investigators Steven T. Cross, Peter J. Mancini, and Michael Douglas.

At approximately 9:10 a.m., the Chair opened the meeting.

The first order of business was to approve the minutes of the Open

Session held on January 10, 2006. Upon motion made by Commissioner Kirby, duly seconded by Commissioner Binder, it was

VOTED: To approve the minutes of the Open Session held on January 10, 2006.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Richard E. Kirby, Patricia M. Moran, James C. Segovis, and Ross Cheit.

ABSTENTION:Frederick K. Butler.

Commissioner Cheit then inquired about whether the Chair could report out in Open Session the individual votes cast by Commissioners regarding actions taken by the Commission in Executive Session. Senior Staff Attorney D'Arezzo stated that she spoke to the Attorney General's Office about this question last year and was informed that the Commission is not required to report out individual votes in Open Session. She pointed out that the individual votes cast by Commissioners in Executive Session are currently made available to the public in the specific Executive Session minutes.

Commissioner Cheit inquired whether the Attorney General's Office gave this advice based upon an interpretation of the law or whether this was in the statutory language. Senior Staff Attorney D'Arezzo informed that this was an interpretation of the Open Meetings Act.

Commissioner Cheit stated that he would like the Commission to vote on instituting such a requirement. Chair Lynch suggested that this issue be discussed in more detail under the New Business agenda item.

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date.

The first advisory opinion was that of William Juhr, a member of the North Smithfield Zoning Board of Review. The petitioner was present.

Staff Attorney Robertson presented the Commission Staff recommendation. She pointed out that this advisory opinion was tabled by the Commission at the last meeting.

The petitioner stated that he regretted being unable to attend the last meeting and stated that his absence was due to a work-related emergency. He informed that he had no control over who set up the link on VASG's website. He noted that it was easy for him to call VASG and have them remove this link; however, he pointed out that removing a link may not always be as easy as anyone can set up such a link without permission.

In response to Commissioner Weavill, the petitioner informed that his request is not moot as the Zoning Board did not consider the

development project as planned on January 17th, and that the matter is now scheduled for January 31st. In response to Commissioner Kirby, the petitioner informed that he did not know why the matter was rescheduled.

In response to Commissioner Segovis, the petitioner informed that his business relationship with VASG ended because VASG wanted to reduce costs and have its membership maintain the website. The petitioner informed that his relationship terminated about one week after he was appointed to the Zoning Board, specifically about two months ago. The petitioner stated that he did not create the content of the website. Rather, he stated that VASG provided him with the content and he cut and pasted it to the website.

In response to Commissioner Weavill, the petitioner informed that he was paid an initial fee for creating the website and then a monthly service charge and maintenance fee. He stated that these are flat rates and that he was paid in full by VASG for all of these services. In response to Commissioner Kirby, the petitioner stated that he was appointed to the Zoning Board in November of 2005 and that he was first contacted by VASG to do this website work in February of 2005. He further informed that he never was a member of VASG and never attending any VASG meetings besides those regarding the website. He stated that he had attended Zoning Board meetings prior to his appointment for his own interest and not related to his work for VASG.

Upon motion made by Commissioner Moran, duly seconded by Commissioner Binder, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to William Juhr, a member of the North Smithfield Zoning Board of Review.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Richard E. Kirby, Patricia M. Moran, James C. Segovis, Frederick K. Butler, and Ross Cheit.

The next advisory opinion was that of Mary Jane Balser, a member of the New Shoreham Town Council. The petitioner was present with attorney Neal Pandozzi. Also present was Merlyn O'Keefe, the Town Solicitor of New Shoreham. Staff Attorney Leyden presented the Commission Staff recommendation.

The petitioner noted that on page two, in paragraph three of the advisory opinion she is listed as the principal owner of Maclac. She stated that she was not sure what principal owner meant and clarified that she is only a 30% owner of Maclac. She also noted that in the same paragraph the opinion states that Pepsi is a franchise. The petitioner represented that Pepsi does not have franchises.

The petitioner informed that Maclac repairs soda gun systems for free

because there is no such cleaner on Block Island. She stated that her husband received training and a license to perform such cleaning. She informs that she provides such services for public relations reasons and also in consideration of health and safety. She emphasized that Block Island is a small community and that the residents regularly provide services to each other. She stated her market is the only grocery store on the island. She remarked that she knew she should recuse from matters related to Class A licenses, however, she was unsure of whether she could participate in Class B matters.

The Chair acknowledged Merlyn O'Keefe, the Town Solicitor of New Shoreham, who was present in the audience. He stated that the town is concerned about the Commission's decisions on the Balser and Sisto advisory opinions before them today. He stated that 40% of the island cannot vote on matters regarding liquor licenses. He remarked that it is well-known that Ms. Balser owns the grocery store and that she has a relationship with Pepsi.

Mr. O'Keefe pointed out that the island's major industry is tourism and that there are only about 500 residents. He noted that on Ground Hog Day there is a residency count that totals approximately 750. He commented, however, that people intentionally appear the island on that day. He informed that there are five members of the New Shoreham Town Council, which includes three Town Council members at-large and two Wardens.

Mr. O’Keefe stated that a crucial issue is the caps on liquor licenses which, in his opinion, would have a slight impact on Ms. Balser. He expressed his opinion that Ms. Balser and Mr. Sisto should be able to vote on the caps. He asked that the Commission accommodate the island given its size. He stated that Mr. Sisto could not attend and requested that his opinion be tabled until the next meeting. By consensus, the Commission agreed to continue Mr. Sisto’s request.

In response to Commissioner Cheit, Mr. O’Keefe corrected that his earlier statement that 40% of islanders cannot vote on liquor licenses should have referred to 40% of the Town Council. Mr. O’Keefe then stated that if Ms. Balser and Mr. Sisto cannot participate in such matters then 40% of the Town Council cannot participate. Mr. O’Keefe specified that he believed that 30% of islanders cannot participate in liquor license matters given that so many islanders work with businesses that have liquor sales. He informed that there are 23 Class B licenses and 2 Class A licenses in New Shoreham, and that these are not seasonal licenses. He informed that the cap on the number of licenses does not go up throughout the year.

The petitioner expressed her opinion that she did not think that she was a business associate of every business to which she provided volunteer services and pointed out that she is not actually paid for such services. She informed that she volunteers to do many things for non-business associates, including cleaning lines and ice

machines. The petitioner commented that it is hard to get residents to run for government positions.

Commissioner Kirby remarked that there may be some common ground and flexibility with regard to the petitioner's participation in Class B and entertainment license matters. He pointed out, however, that the petitioner sells Pepsi to nearly all of the Class B license holders. Staff Attorney Leyden commented that the petitioner has a business association with nearly all Class B license holders and that matters regarding entertainment licenses would financially impact her business associates.

Commissioner Segovis pointed out that, regardless of whether the petitioner was paid for these services, the provision of them was, as the petitioner stated, public relations for her business. In response to Commissioner Cheit, Mr. O'Keefe stated that the petitioner's strongest argument is her participation in license caps. He stated his opinion that the impact to the petitioner from participating in such matters is "attenuated." He informed that Rhode Island law sets the number of licenses and at issue is whether an applicant meets the license requirement.

The petitioner commented that the majority of items she sells to Class B license holders are from her store, such as milk, bread, and tomatoes, and that her Pepsi sales to Class B license holders is just a small part of what Class B holders buy from her.

Commissioner Binder stated that the petitioner has a business relationship with all Class B license holders separate from the sale of Pepsi.

Chair Lynch emphasized that the petitioner should consider the Code carefully when participating in Town Council matters given her business relationship with everyone on the island. He pointed out that this is not the first time a Town Charter conflicted with the Code of Ethics and that possibly the real issue is the need to revise the Charter. He commented that the Rule of Necessity does not yet come into play and that petitioner Sisto is not even here today.

After motion made by Commissioner Segovis to approve the staff recommendation, duly seconded by Commissioner Weavill, the Commission agreed by consensus to discuss the request further.

Commissioner Kirby commented that the petitioner is a victim of her own success as the successful individuals in a community tend to become involved in the decision-making for the community. He stated that he found Mr. O'Keefe persuasive and suggested that the Commission change the recommendation regarding the vote on the cap for Class B licenses given that the petitioner does business with all of them and that she would not be impacted by an increase in this cap. Specifically, Commissioner Kirby suggested that the draft advisory opinion be amended on page three to state that the petitioner does not have to recuse from matters regarding the cap on

Class B licenses. He stated that the petitioner should still have to recuse from matters regarding the renewal of Class B licenses.

Chair Lynch recommended that the Commission vote on the standing motion first. Commissioner Cheit stated that he knows Block Island and agrees with the draft opinion. He expressed his opinion that the petitioner's strongest argument may be the Rule of Necessity and suggested that the petitioner request the Commission to hold its consideration of her opinion until petitioner Sisto is present.

Commissioner Segovis commented that the Commission should not get involved in how New Shoreham runs its government. He expressed concern about the precedent the Commission may be setting. He noted that in the future someone else may be in this situation and may not have the petitioner's good will. Commissioner Cheit noted that the Rule of Necessity does not apply at this point and that petitioner Sisto may never make it here. Commissioner Kirby commented that the Rule of Necessity does not yet apply.

In response to Commissioner Binder, the petitioner informed that previously the Town Council had three members that could not participate in a matter. The petitioner explained that she and another member recused and that a third member was in Hawaii. Commissioner Binder remarked that this situation raised a governance issue and not the Rule of Necessity. Chair Lynch stated that he would do a roll call vote on the standing motion in support of

the staff recommendation. It was

VOTED: To issue an advisory opinion, attached hereto, to Mary Jane Balser, a member of the New Shoreham Town Council.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, James C. Segovis, Frederick K. Butler, and Ross Cheit.

NOES: Richard E. Kirby and Patricia M. Moran.

Commissioner Lynch thanked the petitioner for attending the meeting and coming from New Shoreham to be here. Mr. O'Keefe then requested that the Commission consider Mr. Sisto's request at the Commission's February 7, 2006 meeting.

Upon motion made by Commissioner Kirby, duly seconded by Commissioner Binder, it was unanimously

VOTED: To table the advisory opinion request of John A. L. Sisto, a member of the New Shoreham Town Council, until the Commission's February 7, 2006 meeting.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Richard E. Kirby, Patricia M. Moran, James C. Segovis, Frederick K. Butler, and Ross Cheit.

The next advisory opinion was that of David P. Florio, a Probation and Parole Supervisor. The petitioner was not present. Staff Attorney Robertson presented the Commission Staff recommendation. In response to Chair Lynch, Staff Attorney Robertson informed that the petitioner stated to her that he was not attending the meeting because he accepted the staff recommendation.

Upon motion made by Commissioner Binder, duly seconded by Commissioner Cheit, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to David P. Florio, a Probation and Parole Supervisor.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Richard E. Kirby, Patricia M. Moran, James C. Segovis, Frederick K. Butler, and Ross Cheit.

The next advisory opinion was that of Jan P. Malik, a legislator serving in the Rhode Island House of Representatives. The petitioner was not present. Staff Attorney Robertson presented the Commission Staff recommendation.

In response to Chair Lynch, Staff Attorney Robertson informed that petitioner told her that he would not attend the meeting because he agreed with the staff recommendation. Commissioner Kirby expressed his concern about the proposed commission eventually

drafting legislation. Staff Attorney Robertson referred the Commissioner to page 4 of the draft advisory opinion, which expressly informs the petitioner, if he is serving on the commission, to seek advice from the Commission should the work of the commission change to address substantive issues, such as legislation.

Chair Lynch expressed his concern with the petitioner being a member of the commission that holds hearings on matters in which the petitioner has an interest. He stated that the petitioner should know how the one-distribution procedure works given his business.

Commissioner Segovis stated that the establishment of the commission is a political act and expressed concerns about the petitioner serving on the commission. He noted that he would not have a problem with the petitioner testifying before the commission. He remarked that the petitioner's independence of judgment could be impacted by serving on the commission given his business interests.

Staff Attorney Robertson reviewed section 5(b) of the Code of Ethics regarding independence of judgment and noted that it referred to the acceptance of employment which is not at issue here. She also noted that section 5(a) of the Code of Ethics requires that there be a direct financial impact and noted that such an impact is not reasonably foreseeable here based on the petitioner merely creating and serving on a general, informational commission.

Commissioner Kirby remarked that he did not have a problem with the petitioner proposing the commission. Rather, he stated that he had concerns about the petitioner's role in drafting of legislation on these issues and the role the commission may play in such legislation. Commissioner Cheit stated that he is not convinced that there is a conflict yet. He pointed out that legislation is not an issue now and that the opinion requires the petitioner to seek the Commission's advice before legislation is considered. He stated at this point the issue is only whether the petitioner may propose and serve on an informational commission.

Chair Lynch remarked that petitioner, before participating in any legislation on these issues, seek the advice of the Commission and attend the meeting. He noted that the Commission will have to consider the legislative proposal at issue in detail.

Staff Attorney Robertson pointed out that, should the petitioner draft such legislation and seek the Commission's advice, the class exception may become an issue.

Upon motion made by Commissioner Cheit, duly seconded by Commissioner Kirby, it was

VOTED: To issue the draft advisory opinion, attached hereto, to Jan P. Malik, a legislator serving in the Rhode Island House of Representatives.

AYES: James Lynch, Sr., Richard E. Kirby, Frederick K. Butler, and Ross Cheit.

NOES: Barbara Binder, George E. Weavill, Patricia M. Moran, and James C. Segovis.

The motion failed for lack of a majority. Chair Lynch stated that the petitioner should be informed that he no longer has safe harbor and will be proceeding at his own risk.

*** Commissioner Butler left the meeting at 10:27 a.m.**

At approximately 10:28 a.m., upon motion was made and duly seconded, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(1), (a)(2), and (a)(4), to wit:

a.) To approve the minutes of Executive Session held on January 10, 2006.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Richard E. Kirby, Patricia M. Moran, James C. Segovis, and Ross Cheit.

At approximately 11:40 a.m., the Commission returned to Open

Session.

The next order of business was discussion of Commission Regulations. Chair Lynch commented that Commission Regulation Subcommittee “A,” handling nepotism issues, was meeting today after the Commission meeting.

The next order of business was the Staff update and Discussion of Operation Compliance presented by Chief of Investigations Steven T. Cross. In his update on Operation Compliance, he noted that in 2005 the Commission obtained a financial disclosure compliance rate of 91% and that this rate was surprising given that this was the first full year that the changes made to the Rhode Island General Laws were implemented relating to financial disclosure. Chief of Investigations Cross also reported that the staff initiated 35 financial disclosure complaints against state and municipal officials and that all of them were resolved.

Among other activities of the staff, Chief of Investigations Cross informed that the Commission staff hosted two delegates from the country of Mozambique at the request of the Defense Institute of International Legal Studies, which is under the U.S. Department of Defense. He informed that the delegates were a General in the National Army and a high level government official responsible for ethical government. He stated that the Commission staff informed the delegates about the Rhode Island Ethics Commission.

Chief of Investigations Cross reported that on December 13th, 2005, Commission Investigators Peter Mancini, Michael Douglas, and he went to the Providence Police Academy to speak to police recruits about the Code of Ethics as part of their police training. Chief of Investigations Cross shared his experiences at the 2005 COGEL Conference and noted that Kent and he were asked to formulate and moderate a panel on the subject of Alternative Dispute Resolution (“ADR”) and its use in ethics investigations and complaints. He also pointed out that both Kent and he were asked and respectfully declined an invitation by a non-profit Washington, D.C. group to travel to a third world country to explain how the Rhode Island Ethics Commission operates and to assist in the training of investigators.

In response to Commissioner Weavill, Chief of Investigations Cross informed that the Commission staff has offered itself to provide training to the Municipal Training Academy and State Police Training Academy, but, to date, have not been taken up on the offer. In response to Commissioner Weavill, Staff Attorney Gramitt informed that internet filing of financial disclosure statements is being considered by the Commission staff and noted that it is on the mind of the legislators in the General Assembly. He informed that the Commission staff is actively taking steps to implement such a procedure and will seek proposals from the Department of Information Technology (“DOIT”). He stated that Katherine D’Arezzo will use such information when crafting the Commission’s budget

and pointed out that the Commission will not implement such filing in 2006, but may do it in 2007.

In response to Commissioner Weavill, Staff Attorney Gramitt stated that the Commission staff will communicate with both the Secretary of State's Office and the Board of Elections about how their electronic filing systems operates and study the feasibility of utilizing their software.

* At approximately 11:03 a.m., Commissioner Kirby and Commissioner Moran left the meeting.

The next order of business was Discussion of COGEL Conference by Commissioners and Staff. Staff Attorney Robertson spoke to the Commission about her COGEL experience and about the resources provided by COGEL. Commissioners shared their experiences as well.

The next order of business was the Director's Report. Executive Director Willever reported that the Commission has a new phone system and with it the staff received new extensions. He shared with the Commission that he received positive correspondence from the House of Representatives regarding an educational program conducted there by Staff Attorney Gramitt. He also informed that Staff Attorney Gramitt met recently with representatives of Common Cause. He reported on the pending complaints and advisory

opinions.

In response to Chair Lynch, Senior Staff Attorney D'Arezzo informed that in February and March the House and Senate Finance Committees will be meeting regarding the budget, and she briefly went over the steps the Commission staff will be taking regarding the budget. In response to Commissioner Weavill, Executive Director Willever summarized the anticipated expenses and requests for the budget.

Commissioner Segovis suggested that the Commission staff consider adding a budget proposal for new educational programs. Specifically, he suggested putting programs on CD or creating web-casting of them. He stated that the production costs on such programs may be noteworthy, but pointed out that in the long term such education would be inexpensive to update. He stressed that this could be a powerful tool to education public officials given that officials can learn the Code of Ethics on their own schedule.

The next order of business was New Business. Chair Lynch asked Commissioner Cheit to comment further on the proposal he mentioned earlier regarding Executive Session votes. Commissioner Cheit first pointed out on another subject that, in the future, he would like the Commission to address the letter from Common Cause regarding the role of the complainants in the settlement process. Chair Lynch stated that the Commission has addressed this issue

several times in the past.

With regard to the minutes, Commissioner Cheit stated that he would like the Chair to report out in Open Session the individual votes of Commissioners cast in Executive Session. Legal Counsel Managhan clarified that Commissioner Cheit would like the Commission to consider this new requirement regardless of any legal requirement to conduct such reporting. Chair Lynch asked that this item be added to the agenda for the next meeting. He also asked Senior Staff Attorney D'Arezzo to put together a memo on the information she obtained last year from the Attorney General on whether it is required that such information be reported out in Open Session.

At approximately 11:25 a.m., upon motion made by Commissioner Binder, duly seconded by Commissioner Weavill, it was unanimously

VOTED: To adjourn the meeting.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, James C. Segovis, and Ross Cheit.

Respectfully submitted,

George E. Weavill, Jr.

Secretary